IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 658 of 1981

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RASIKLAL J SHUKLA DECD.THROUGH HIS HEIRS

Versus

BHARAT V DAVE (MINOR) THROUGH NATURAL GUARDIAN V M DAVE

Appearance:

MR ASHOK K PADIA for Petitioners

MR JD AJMERA for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 25/07/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act, at the instance of the original tenant (through his heirs), who was sued by the respondent-landlord for a decree of eviction under the provisions of the Bombay Rent Act.

2. The landlord sued for a decree of eviction on the

ground of nuisance and also on the ground that the tenant was in arrears of rent for more than six months. The trial court, after appreciating the evidence on record, dismissed the suit for eviction on the ground of nuisance. However, the trial court found on the facts of the case that there was a dispute as to standard rent raised within 30 days of the statutory notice, and that therefore the case would fall out of the purview of section 12(3)(a) and would be governed by section 12(3)(b) of the Rent Act. However, the trial court found that the tenant has not complied with the provisions of section 12(3)(b), that he has failed to satisfy the statutory conditions contained therein and has therefore lost the protection of the said provision. The trial court, therefore, passed a decree for eviction under section 12(3)(b) of the said Act. At this stage it must be noted that the dispute as to standard rent was decided by the trial court only as part of its final judgement, whereby the contractual rent at Rs.14/- per month was fixed as standard rent at the same figure.

3. Being aggrieved by the decree of eviction the tenant preferred an appeal before the lower appellate court. The lower appellate court, on a total reappreciation of the evidence on record, confirmed the findings of the trial court, rejected the suit of the landlord on the ground of nuisance, confirmed the decree for eviction on the ground of non-compliance with section 12(3)(b) and confirmed the standard rent at Rs.14/- per month.

4. It is under these circumstances that the tenant has preferred the present revision, challenging the decrees of the two courts below.

5. I am conscious of the limitations of this court while exercising revisional powers under section 29(2) of the Bombay Rent Act. I am conscious that it is not open to this court to reappreciate the evidence on record or to differ with the courts below merely on the ground that another view may be possible on the same set of facts. However, if this court finds that a totally erroneous view in law has been taken in respect of the facts found, or that the correct law applicable to the found facts has been completely ignored, and the consequence thereof would be a travesty of justice, this court is bound to interfere. On the facts found in the present revision, I am of the view, for the reasons stated hereinafter, that to permit the impugned findings and the decrees passed by the two courts below to remain would amount to a perversity in law and also a travesty of justice.

6. There is no dispute that the landlord had issued the statutory notice at Exh.23 dated 19th August 1976 and that the tenant replied to the said notice at Exh.26 dated 4th September 1976, within one month. The tenant in his reply at Exh.26, particularly in paragraph 8 thereof, has specifically contended that the contractual rent of Rs.14/- per month is excessive and that the standard rent would be much lower than this figure. The fact that the dispute as to standard rent has been raised within 30 days of the statutory notice would ipso facto take the case out of the operation of section 12(3)(a) and the case would then be governed by section 12(3)(b) of the Rent Act.

7. What both the courts below have failed to appreciate is that the trial court determined the standard rent at Rs.14/- per month only at the stage of judgement and under the same. The tenant had, until the judgement was delivered, no inkling as to what the standard rent would be, and therefore had no idea as to his obligation of the rate at which he is required to make the deposit. At this stage it is relevant to note that the landlord, as plaintiff in the suit, had not made any application to the trial court under section 11(4) of the Act, for fixing the interim rent. Under the circumstances the correct legal position is that the trial court was required to give time at the judgement stage to the tenant to pay up the arrears at the rate of standard rent determined by the said judgement. This clear position in law was also not appreciated by the lower appellate court, while confirming the judgement and decree of the trial court.

8. The legal position in this context is quite clear. In 15 GLR page 310 (Gangaben Poonjabhai Amin Vs. Narayan Sonia and Another) this court decided that it was the mandatory duty of the court to exercise its suo motu power to give time to the tenant to pay up the arrears at the rate of standard rent, when the standard rent is determined only by the judgement of the trial court, and that this must be so in order that the protection of section 12(3)(b) is not rendered illusory. This decision further lays down that even at the stage of appeal or revision, the court would have the suo motu power which ought to be exercised to give time to the tenant to pay up the dues before passing any decree for eviction.

8.1 The aforesaid view has been approved and confirmed in 24(1) GLR page 263 (Rupaben Wd/o Kaththu Dhanji Vs. Babubhai Deojibhai), and further reiterated

and emphasised in the decision of this court in 28(1) GLR page 352 (Naniben D/o Dayalbhai Morarbhai Vs. Vidhyaben Ambalal Mistry).

9. Learned counsel for the respondent-landlord sought to contend that the dispute as to standard rent can be raised only by filing an application under section 11(3) of the Act, and not by any other mode or method. In support of this proposition he sought to rely upon a deicison of the Supreme Court in the case of Harbanslal Vs. Prabhudas, reported in AIR 1976 SC 2005, and particularly the observations made in paragraph 25 therein. Having considered the said observations of the Supreme Court, I am unable to agree with the learned counsel for the respondent-landlord inasmuch as I find that the relevant observations do not support the proposition canvassed by him. Even otherwise, on a plain reading of sub-section (3) of section 11, it becomes obvious that the court is conferred by this provision with a power to make orders of an interim nature as to deposit of interim rent, in a situation where the tenant has filed an application for fixing the standard rent, such applicant being a tenant who has received a notice from his landlord under section 12(2). Thus, sub-section (3) of section 11 qualifies the applicant-tenant who can make such an application, and confers a power on the court to pass interim orders as to interim rent. It is equally obvious that the tenant who has not received a notice from his landlord under section 12(2) nevertheless has a right to file an application for determination of the standard rent, but that is an independent right conferred by sub-section (1) of section 11 of the said Act. The essential difference between sub-section (1) and sub-section (3) is that the former provision enables any tenant to make an application for standard rent, whereas sub-section (3) restricts the application only to a tenant who has received a statutory notice under section 12(2).

9.1 Thus, the two provisions read together do not debar a tenant from raising a dispute as to standard rent in his reply to the statutory notice, and in furtherance thereof, raise the same contentions in his written statement. This contention of the learned counsel for the respondent must, therefore, fail.

10. Thus, there cannot be any controversy that on a correct application of the law to the facts found by the two courts below, would not justify a decree for eviction, at least at the hands of the trial court or the lower appellate court. Since the present revision is an

extension of the same proceedings, the obligation of the tenant is to have regularly deposited the rent even during the pendency of the present revision. Consequently the impugned judgements and decree of the courts below are quashed and set aside, subject to the qualification that the petitioner-tenant has continued to regularly deposit the amount even during the pendency of the present revision, and upto the date of the present judgement. If there is any shortfall in the deposit on the date of the present judgement, or if the tenant has not been regular in making the deposits, he would lose the protection of section 12(3)(b) of the Rent Act and would then be liable to be evicted (on the basis of the decree of the lower appellate court).

11. Subject to the aforesaid observations this revision is allowed and rule is made absolute with no order as to costs. Interim relief stands vacated.

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